

**AN ORDINANCE  
BY FINANCE/EXECUTIVE COMMITTEE**

**AN ORDINANCE TO RATIFY AND EXTEND AN EXPIRED CONTRACT, FC-6004007803A, ANNUAL CONTRACT FOR SMALL WATER METERS WITH BACK FLOW PREVENTION DEVICES, BETWEEN CITY OF ATLANTA AND KEMI CONSTRUCTION COMPANY, INC., FOR THE PURPOSE OF SECURING CONTINUED SERVICES FOR A TEMPORARY PERIOD OF TIME UNTIL SUCH TIME AS SERVICES ARE RE-PROCURED; TO WAIVE PORTIONS OF THE ARTICLE X OF THE CITY'S REAL ESTATE AND PROCUREMENT CODE; AND FOR OTHER PURPOSES.**

WHEREAS, the City of Atlanta ("City") entered into an original agreement on with Kemi Construction Company, Inc. ("Contractor"), FC- 6004007803A, Small Water Meters With Backflow Prevention Devices ("Agreement"), pursuant to Resolution No. 04-R-1568; and

WHEREAS, the term of the Agreement was for one (1) year with two (2) one (1) year renewal options at the sole discretion of the City; and

WHEREAS, a ninety (90) day extension was provided to extend the original term of the Agreement to March 13, 2006; and

WHEREAS, Renewal Agreement No. 1 was authorized, pursuant to 06-R-0167, for a period of one additional year; and

WHEREAS, Renewal Agreement No. 2 was authorized, pursuant to 06-R-2642, for a period of one additional year; and

WHEREAS, the Contractor performed adequately during the course of the Agreement, which has expired; and

WHEREAS, the Department of Procurement initiated a procurement on behalf of the Department of Watershed Management, via a competitive bid selection process, to contract for the same services previously covered under the above Agreement, which project is referred to as FC-4229, Annual Contract for Small Water Meters ("Project"); and

WHEREAS, during the course of the recommending an award for the Project, one of the bidders challenged the procurement, seeking equitable relief and through the appeals process for procurement matters, in the Fulton County Superior Court, on the basis of challenging whether the procurement documents provided adequate notice to the bidders of the City's Joint Venture requirements for the Project; and

**WHEREAS**, upon seeking advice from the City Attorney and in consultation with the Commissioner of the Department of Watershed Management and the Chief Procurement Officer, it has been determined that it is in the City's best interests to cancel the current Procurement of the Project to avoid uncertain legal risks in the course of litigation and to re-procure the services contemplated in the Project; and

**WHEREAS**, the services contemplated in the Project are essential to the operations of the Department of Watershed Management, namely to ensure that new small meter equipment is available and installation services are performed continuously 1) for the benefit of new development so that new development is not delayed due to the lack of availability of a water connection; and 2) so that the City's small meter replacement program of malfunctioning and leaking meters is not interrupted or delayed, which will ensure that water is not wasted during this time of drought and the City maximizes its revenues from accurate meter readings; and

**WHEREAS**, it has been determined that an interim procurement solution to secure the essential services, as described above, is necessary for the period time that is required to re-procure the Project; and

**WHEREAS**, it has been further determined that such interim services do not fit within any selection methodology currently provided for in Article X of the City's Real Estate and Procurement Code; and

**WHEREAS**, in order to ensure that these essential services continue under these unique circumstances, it is necessary to implement an interim procurement solution, which is supplementary to Article X of the City's Procurement Code, for a defined, short period of time, being no longer than nine (9) months, until such time as the services can be secured through a re-procurement of the Project; and

**WHEREAS**, the services contemplated under the Project are the same services performed under the above Agreement; the services under the above Agreement were procured through a competitively bid process; the services performed under the Agreement were only recently completed such that the City would not be required to incur large re-mobilization and other related costs; and the City was satisfied with the services of the Contractor; and

**WHEREAS**, in consultation with the City Attorney, the Chief Procurement Officer and the Commissioner of the Department of Watershed Management recommends that the City extend and otherwise ratify FC-6004007803A, Small Water Meters With Backflow Prevention Devices, with Kemi Construction Company, Inc..

**NOW THEREFORE BE IT AND IT IS HEREBY ORDAINED BY THE COUNCIL OF THE CITY OF ATLANTA AS FOLLOWS:**

**Section 1.** The Agreement between the City of Atlanta and Kemi Construction Company, Inc., FC-6004007803A, Small Water Meters with Backflow Prevention Devices, is

hereby revived as an expired contract, for the purpose of extending the term of the Agreement and to otherwise ratify the amendment of the term of the Agreement from the date of expiration of the Agreement to and through the effective date of this Ordinance plus a period of time on a month-to-month basis to allow for the Project to be re-procured, but not to exceed nine (9) months from the effective date of this Ordinance, in order to provide for an interim contract for small water meter installation services, as described above.

**Section 2.** The parties to the Agreement shall be bound by all terms and conditions of the Agreement and any and all amendments thereto, including without limitation, all pricing terms for the services contemplated in the Agreement.

**Section 3.** The term of this Amendment to ratify and extend the term of the Agreement shall be for a period of time that is month-to-month until such time as services contemplated under the Project are re-procured, but not to exceed nine (9) months from the effective date of this Ordinance.

**Section 4.** Article X of the City's Real Estate and Procurement Code is hereby waived for the purpose of fulfilling the intent and purposes of this Ordinance, to the extent that it applies, specifically including without limitation, any requirement to competitively procure short-term, interim small water meter installation services.

**Section 5.** The Mayor is hereby authorized to execute an appropriate Amendment to the Agreement in accordance with this Ordinance, as prepared and approved by the Chief Procurement Officer in consultation with the City Attorney.

**Section 6.** All contracted work will be charged to and paid from Fund Department Organization and Account Number: Fund 5057 (2001 Water and Wastewater Bond Fund) Department/Organization 170202 (DWM Biosolids Treatment and Collections) Account 5414002 (Facilities Other than Buildings/Infrastructure) Function Activity 4330000 (Sewerage Collection and Disposal) Project 100395 (Water Mains Various Locations) Funding Source 21444 (DWM 2001 Bond 9999) in an amount not to exceed Two Million Dollars (\$2,000,000.00).

TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE

ATTN: GREG PRIDGEON

Dept.'s Legislative Liaison: Maisha Land-Woods

Contact Number: 404-330-6887

Originating Department: Department of Watershed Management

Committee(s) of Purview: Finance/Executive

Chief of Staff Deadline: N/A (June 18, 2008)

Anticipated Committee Meeting Date(s): July 2, 2008

Anticipated Full Council Date: July 21, 2008

Legislative Counsel's Signature: \_\_\_\_\_

Commissioner Signature: \_\_\_\_\_

Chief Procurement Officer Signature: \_\_\_\_\_

CAPTION

AN ORDINANCE TO RATIFY AND EXTEND AN EXPIRED CONTRACT, FC-6004007803A, ANNUAL CONTRACT FOR SMALL WATER METERS WITH BACK FLOW PREVENTION DEVICES, BETWEEN CITY OF ATLANTA AND KEMI CONSTRUCTION COMPANY, INC., FOR THE PURPOSE OF SECURING CONTINUED SERVICES FOR A TEMPORARY PERIOD OF TIME UNTIL SUCH TIME AS SERVICES ARE RE-PROCURED; TO WAIVE PORTIONS OF THE ARTICLE X OF THE CITY'S REAL ESTATE AND PROCUREMENT CODE; AND FOR OTHER PURPOSES.

Mayor's Staff Only  
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Received by CPO: \_\_\_\_\_ Received by LC from CPO: \_\_\_\_\_  
(date) (date)

Received by Mayor's Office: 6/27/08 Reviewed by: [Signature]  
(date) (date)

Submitted to Council: \_\_\_\_\_